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8
9 UNITED STATES BANKRUPTCY COURT

10 NORTHERN DISTRICT OF CALIFORNIA

11 SAN FRANCISCO DIVISION

12 In re

Case No. 01-30923 DM

13 PACIFIC GAS AND ELECTRIC
COMPANY, a California corporation,

Chapter 11 Case

14 Debtor.

Date: November 8, 2002
Time: 1:30 p.m.
Place: 235 Pine Street, 22nd Floor
San Francisco, California

15 Federal I.D. No. 94-0742640
16
17

18 NOTICE OF THIRD MOTION AND THIRD MOTION FOR
19 AUTHORITY TO INCUR MISCELLANEOUS IMPLEMENTATION
EXPENSES; MEMORANDUM OF POINTS AND AUTHORITIES
20 IN SUPPORT THEREOF

21 [SUPPORTING DECLARATIONS OF LANCE MAEDA, MICHAEL
SCHONHERR, WILLIAM A. UTIC AND JUDI MOSLEY FILED
22 SEPARATELY]
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THIRD MOTION FOR AUTHORITY TO INCUR MISCELLANEOUS IMPLEMENTATION EXPENSES

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HOWARD
RICE
NEMEROVSKI
CANADY
FALK
& RABKIN
A Professional Corporation

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A Professional Corporation

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 Pacific Gas and Electric Company, the debtor and debtor-in possession in the
3 above-captioned Chapter 11 case ("PG&E"), requests an order authorizing PG&E to incur
4 additional miscellaneous implementation expenses related to implementation of PG&E's
5 proposed Plan of Reorganization, pursuant to Bankruptcy Code Section 363(b)(1).

6
7 **I. FACTUAL BACKGROUND**

8 PG&E filed a voluntary petition for relief under Chapter 11 of the Bankruptcy
9 Code on April 6, 2001. A trustee has not been appointed, and PG&E continues to function
10 as a debtor-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

11 PG&E, together with its parent corporation, PG&E Corporation, has proposed a
12 Plan of Reorganization (as amended from time to time, the "Plan"), which has recently been
13 voted on by creditors, along with the competing plan of reorganization proposed by the
14 California Public Utilities Commission. The confirmation hearing is scheduled to
15 commence on November 18, 2002.

16 The Plan generally provides for the creation of three new companies, ETrans
17 LLC, GTrans LLC and Electric Generation LLC (collectively, the "New Entities"), whereby
18 PG&E will separate its operations into four lines of business based on PG&E's historical
19 functions. Accordingly, the Reorganized Debtor will continue the retail gas and electric
20 distribution business, ETrans LLC will operate the electric transmission business, GTrans
21 LLC will operate the interstate gas transmission business, and Electric Generation LLC will
22 operate the electric generation business.

23 PG&E previously filed and obtained orders approving 12 motions seeking
24 authority to incur costs related to implementation of the Plan. In the Motion for Authority to
25 Incur Information Technology Consulting Expenses and the accompanying Declaration of
26 Stephanie Maggard (the "Maggard Declaration"), filed on July 23, 2002, PG&E identified
27 additional implementation projects that will need to commence before the Plan is confirmed
28 (the "Implementation Projects") and estimated that the total expenses for these

1 Implementation Projects will range from \$10.8 to \$17.8 million. Since that time, PG&E has
2 obtained approval for \$6,999,990 in additional implementation expenses pursuant to the
3 Motion for Authority to Incur Miscellaneous Implementation Expenses filed on August 15,
4 2002 and the Motion for Authority to Incur Additional Miscellaneous Implementation
5 Expenses filed on September 12, 2002. The present motion seeks approval for an additional
6 \$1,694,400 in implementation-related expenses.

7 For each of the staffing agencies and consulting firms described below, PG&E's
8 standard contractual provisions in place with these agencies and firms (or to be included in
9 any contracts to be executed hereafter) do not guarantee future work or any minimum
10 amount of revenue. PG&E will also maintain the right to terminate the work at any time
11 without cause, in which case PG&E is liable only for work performed to the date of
12 termination plus costs reasonably incurred by the consultant in terminating any work in
13 progress.

14
15 **A. Accounts Payable Interactive Voice Response (Cost Estimate—\$58,000).¹**

16 PG&E currently uses an Interactive Voice Response ("IVR") system for accounts
17 payable functions, the FirstLine Encore IVR system, provided by EPOS Corporation. This
18 system allows vendors and employees to access their invoice and payment information
19 through a series of interactive menus by using their touch-tone phones. PG&E believes it is
20 necessary to have the IVR system available to vendors and employees of the New Entities
21 by the Effective Date under the Plan to allow for a smooth transition and to minimize
22 confusion for vendors and employees who are accustomed to using the IVR system. EPOS
23 Corporation will provide the necessary hardware, software, installation and training in
24 connection with the FirstLine Encore IVR system for the New Entities at a cost of
25 approximately \$58,000. This work will not commence until immediately after Plan
26 confirmation, as PG&E believes it can be completed during the period between confirmation
27

28 ¹ See Declaration of Lance Maeda filed concurrently herewith.

1 and the Effective Date under the Plan ("Plan Effective Date"). PG&E is including this
2 request now so that this work can commence immediately following Plan confirmation
3 without any delay.

4
5 **B. Additional Land-Related Expenses (Cost Estimate—\$750,000).²**

6 PG&E previously filed a Motion for authority to incur and pay land-related
7 expenses on April 12, 2002 (the "Land Motion"), which was approved by order entered on
8 May 17, 2002. The Land Motion described expenses to be incurred by PG&E in connection
9 with title review and analysis, and survey work, for a total estimated cost of \$5,500,000. As
10 stated in the Land Motion, this work arises out of PG&E's large portfolio of real estate
11 assets, including approximately 250,000 acres of land, more than six million square feet of
12 support service space (service centers, offices and warehouses) and hundreds of real
13 property leases (collectively, the "Land"), along with thousands of related real property
14 rights, including: rights-of-way and easements, prescriptive rights, possessory interests,
15 unrecorded rights and other land-related agreements, and associated maps and drawings
16 (collectively, the "Land Rights"). This work is necessary to prepare for the transfers of Land
17 and Land Rights to the New Entities in connection with the implementation of the Plan.

18 Since the Land Motion was filed, PG&E has identified additional land-related
19 work that needs to be completed in advance of the Plan Effective Date, as described below.
20 These new tasks are similar in nature to the work described in the Land Motion and will be
21 completed by the same contractors identified in the Land Motion. However, PG&E
22 estimates that the completion of these new tasks could add up to \$750,000 in additional
23 expenses.

24 The additional work to be completed consists of:

25 a. **Additional Land and Land Rights Analysis and Reconciliation.** This
26 category of work includes title work in connection with the review, analysis and

27
28 ² See Declaration of Michael Schonherr filed concurrently herewith.

1 reconciliation of all Land Rights, including field verification of information, assignment of
2 the Land and Land Rights to the New Entities, and analyzing new and modified rights to be
3 acquired. Contractors performing this work are as follows:

- 4 • *EDB Data Resources*
- 5 • *Phillip Longo*
- 6 • *Charles McClue*
- 7 • *Paragon Partners, Ltd.*
- 8 • *Kenneth Sorensen*
- 9 • *Willbanks Resources Corporation*

10 Specifically, the additional work arises out of the transfer of gas transmission
11 facilities to GTrans. In connection with the title review and analysis associated with these
12 gas transmission rights, it is necessary to analyze and reconcile data delineated on
13 approximately 12,000 gas system maps. Additional title review and analysis is also
14 necessary in connection with the distribution feeder mains (i.e., local gas transmission
15 facilities) to be transferred to GTrans.

16 The foregoing projects have become necessary since the previous Land Motion
17 was filed, based on the further development of the asset transfer process and the
18 identification of specific asset transfers to take place between PG&E and GTrans.

19 b. Additional Land Surveying. This category of work includes land surveys,
20 preparation of the deeds and maps related to the possible subdivision, lot line adjustments,
21 and/or transfer of fee properties to the New Entities, work necessary to ensure compliance
22 with local rules and regulations, and preparation of easement reservations and new easement
23 grants. The contractor performing this work is *Towill, Inc.*

24 Specifically, the additional survey work arises out of communications and
25 telecommunications-related transfers that will occur as part of Plan implementation. PG&E
26 requires Towill's services in preparing exhibit maps and legal descriptions in connection
27 with the following agreements to be executed in connection with the Plan: (i) the Master
28 Communications Easement Agreement, which will provide for easements by and between
PG&E and each of the New Entities related to the ongoing maintenance and operation of
communications facilities; this agreement will allow PG&E and each of the New Entities to

1 have the mutual benefit of existing communications facilities that may be located on
2 property owned by PG&E, for example, following the Plan Effective Date; and (ii) the
3 Telecommunications Services Agreement, which will provide for telecommunications
4 services to be provided by ETrans to PG&E and the other New Entities, including the
5 transfer of certain Land Rights related to telecommunications facilities.

6 The foregoing survey projects have become necessary since the previous Land
7 Motion was filed, based on the further development of the asset transfer process with respect
8 to communications and telecommunications facilities that will be part of the Land and Land
9 Rights to be transferred by the Plan Effective Date.

10
11 **C. Facility Separation Costs (Cost Estimate—\$606,400).**³

12 To implement the Plan, PG&E anticipates that seven new buildings will be leased
13 and prepared for occupancy and 30 existing PG&E-owned buildings must be modified for
14 use by PG&E and the New Entities. These facilities are needed to provide separate working
15 areas for field employees of PG&E and each of the New Entities by the Plan Effective Date.⁴
16 For example, PG&E currently has substation maintenance facilities that include both
17 distribution and electric transmission functions, which PG&E believes cannot be operated
18 effectively unless the employees of PG&E and employees of ETrans are physically
19 separated. Since PG&E and ETrans will be separate legal entities, it is important that there
20 be no confusion about employee supervision and compliance with legal and business
21 requirements. Another reason for the new buildings and existing building modifications is
22 that the New Entities will individually be smaller companies, with fewer employees, than
23 present day PG&E. In order for the New Entities to maintain properly-supervised work
24

25 ³ See Declaration of William A. Utic filed concurrently herewith.

26 ⁴ This project will not provide for the separation of all employees of PG&E and the
27 New Entities by the Plan Effective Date; rather, the separation described herein only covers
28 a portion of the facility separation work, specifically the portion that PG&E has deemed
critical to complete by the Plan Effective Date. The remaining facility separation work will
be completed after the Plan Effective Date.

1 sites, it is necessary to modify existing work sites or to find new space that will
2 accommodate the need for consolidated work sites.

3 Although PG&E has identified the need for new space to be leased and for certain
4 construction work to be performed, PG&E will not enter into any leases or commence any
5 construction work until after Plan confirmation (and after obtaining Court approval). The
6 projects set forth below involve preliminary work that must begin promptly in order for
7 PG&E to be prepared to commence construction work following Plan confirmation.

8 1. **Construction Project Managers.** In order to prepare the new buildings for
9 occupancy, and modify the existing buildings to serve multiple companies, PG&E intends to
10 hire construction project managers to manage the required construction work. Although
11 PG&E has in-house expertise in this area, PG&E does not believe it has the capacity to
12 perform the work in-house due to current workloads.

13 Although PG&E intends to delay any construction work until after the Plan has
14 been confirmed, in order to assess the construction needs and plan for the construction work,
15 it is necessary to hire the construction managers promptly to perform preliminary work prior
16 to Plan confirmation. This preliminary work will include the following tasks: (i)
17 determining the scope of work to be performed on each building; (ii) preparing and
18 submitting local building permit and conditional use permit applications; (iii) developing
19 detailed, site-specific work schedules; and (iv) preparing contract specifications, selecting
20 qualified contractors, and negotiating contract terms.

21 Based upon its experience with similar projects, PG&E estimates that
22 approximately seven construction managers will be required to manage the building projects
23 at a total estimated cost of approximately \$425,000. The construction managers will be
24 hired on a temporary basis through Source California Energy Services, Inc. There will be no
25 minimum amounts due and the services may be terminated at any time, without penalty
26 (provided that PG&E will pay for any services performed prior to termination and
27 reasonable expenses incurred).

28 2. **Permits, Engineering and Other Pre-Construction Costs.** With respect

1 to both the buildings to be leased and the existing PG&E-owned buildings, certain pre-
2 construction costs need to be incurred beginning in November 2002 for such items as
3 conditional use and construction permits, preliminary engineering and design work, and
4 environmental assessments. For example, in the case of a building that PG&E intends to
5 lease for use as a Materials Distribution Center for the New Entities,⁵ there are currently
6 estimated costs of \$36,400, comprised of the following components: (i) \$2,000 for a
7 conditional use permit to operate the site as a utility warehouse and distribution center; (ii)
8 \$2,000 for a construction permit related to necessary facility modifications; (iii) \$24,900 for
9 design, seismic analysis, fire protection design and permits related to the installation of
10 materials racking;⁶ and (iv) \$7,500 for a Phase I Environmental Site Assessment.

11 PG&E anticipates that similar expenses will be incurred with respect to the other
12 buildings (provided that a Phase I will only be conducted with respect to the properties to be
13 leased). Until the construction project managers described in Section 1 above begin work,
14 PG&E will not have a precise estimate of the total pre-construction costs. Currently, it is
15 anticipated that Phase I assessments will be conducted with respect to all leased properties at
16 a cost of approximately \$7,500 each. PG&E also seeks authority to incur up to \$100,000 in
17 additional pre-construction expenses to cover permits and engineering costs. While PG&E
18 will have a more precise estimate of these pre-construction expenses within the next month
19 and expects that these expenses will exceed \$100,000, it is important that the projects not be
20

21 ⁵ At page 9 of the Motion for Authority to Incur Miscellaneous Implementation
22 Expenses, filed on August 15, 2002, PG&E explained its intent to have the New Entities
23 share PG&E's existing warehouses until a new Materials Distribution Center ("Center")
24 could be set up. PG&E has now decided to set up the new Center by the Plan Effective Date
25 in lieu of implementing shared warehouse procedures. This decision is based, in part, on the
26 availability of a suitable building for the new Center, which can be prepared for occupancy
27 by the Plan Effective Date. This will also avoid the difficulties of having the New Entities
28 temporarily share warehouse space with PG&E. The \$30,000 in consulting fees previously
approved for the management of the materials distribution project is still needed; the focus
of the project has simply shifted to development of the new Center in lieu of a facility
sharing strategy.

⁶ The vendor for this part of the project is Crown Lift Trucks Company, a supplier of
materials handling products, storage solutions and support services related to warehousing
and materials distribution systems as well as a certified fire engineering and design firm.

1 delayed while PG&E is determining the full extent of this work and can bring another
2 motion for Court approval. Based on PG&E's past experience in preparing buildings for
3 occupancy and the estimates that have been developed for the Materials Distribution Center,
4 PG&E believes that it can begin certain critical or time-sensitive pre-construction work with
5 the authority to incur up to \$100,000 at this time. Therefore, PG&E seeks authority to incur
6 a total of \$181,400 in pre-construction costs, including: (i) \$36,400 in connection with the
7 Materials Distribution Center, as described above; (ii) an additional \$45,000 for Phase I
8 assessments for 6 additional properties to be leased; and (iii) an additional \$100,000 for
9 permit and engineering costs.

10 PG&E believes that it must begin to incur these expenses prior to Plan
11 confirmation for the following reasons. The permits can take as long as two months to
12 process; therefore, as soon as the project managers identify a need for a permit, an
13 application will be submitted to the appropriate local government entity.⁷ The preliminary
14 engineering work must begin prior to confirmation so that the actual construction work can
15 begin promptly following confirmation; also, certain preliminary engineering work is
16 required in connection with the preparation of construction or conditional use permit
17 applications. Finally, an environmental assessment of any property to be leased must be
18 completed prior to the time PG&E enters into the lease, so that PG&E can be fully informed
19 about any environmental hazards associated with the building and have a baseline
20 assessment of the condition of the building prior to PG&E's occupancy.

21
22 **D. ETrans Communications Plan (Cost Estimate—\$280,000).**⁸

23 The separation of PG&E contemplated by the Plan creates special
24 communications issues with respect to ETrans, the entity that will carry on the electric
25 transmission line of business. Unlike the other lines of business within PG&E today, the

26
27 ⁷ Although PG&E may request permits in advance of leasing the properties, it is
28 anticipated that the building owners will consent to the permit applications.

⁸ See Declaration of Judi Mosley filed concurrently herewith.

1 electric transmission line of business is operated as part of PG&E's integrated transmission
2 and distribution business operations without any independent communications-related
3 materials or resources. Therefore, PG&E has identified the need to develop a
4 communications plan to communicate with future ETrans customers⁹ and government and
5 regulatory agencies about ETrans, including the services it will offer, operational
6 information and emergency procedures. The communications plan will help ensure a
7 smooth operating transition in electric transmission service from PG&E to ETrans. The
8 ETrans communications plan will include (i) development of materials (such as
9 informational packets), and (ii) meetings with customers and government and regulatory
10 agencies. As described below, a majority of the costs for this project will not be incurred
11 until after confirmation of the Plan; however, in the interest of judicial economy and to avoid
12 repetitive motions, PG&E has included all expenses related to the ETrans communications
13 plan in this Motion.

14 1. Communications Consultant. PG&E seeks to hire John Ferrare as a
15 communications consultant to provide design and technical writing services for all ETrans
16 communications materials, to develop customer communications strategy and to manage the
17 customer meetings that will be required. PG&E estimates that the total expenses for the
18 communications consultant will be approximately \$130,000, with work to commence in
19 November 2002 and to continue to the Plan Effective Date.

20 2. Communications Analysts. PG&E seeks to hire two communications
21 analysts through CoreStaff Services, Inc., a temporary staffing agency, to provide
22 administrative support for the ETrans communications plan, including editing and
23 proofreading, material layout, and assistance with customer meetings. PG&E estimates that
24 the total expenses for the communications analysts will be approximately \$62,000, with
25 work to commence in December 2002 and to continue to the Plan Effective Date.

26
27 ⁹ ETrans customers will include PG&E as well as various wholesale customers,
28 including municipal districts, generators and certain wireless and fiber optic carriers.

3. Customer Meetings. In connection with meetings to be organized with customers, PG&E estimates that it will incur total expenses of approximately \$70,000. These costs would include such items as renting meeting or conference facilities, preparing presentations, including audiovisual costs, and other related costs associated with the customer meetings. These costs will not be incurred until after Plan confirmation.

4. Communications Materials. In addition to the consultants' services described above, there will be material and printing costs of approximately \$18,000 in connection with preparing the ETrans communications materials. These costs will not be incurred until after Plan confirmation.

Although PG&E anticipates that no more than \$50,000 of the total \$280,000 in expenses described above will be incurred prior to confirmation of the Plan, PG&E believes that the project must begin promptly to allow for sufficient time to implement the ETrans communications plan in advance of the Plan Effective Date.

II.
THE ADDITIONAL IMPLEMENTATION EXPENSES SHOULD BE APPROVED
PURSUANT TO SECTION 363(b)(1) OF THE BANKRUPTCY CODE

PG&E seeks approval for the various implementation expenses set forth above as a use of estate property that is outside of the ordinary course of business under Bankruptcy Code Section 363(b)(1). Since these projects are related to the implementation of the Plan, PG&E believes that the purpose and scope of the expenditure may be characterized as outside of the ordinary course of business and therefore requires Court approval.¹⁰

The Court has considerable discretion in approving a request pursuant to Section 363(b)(1) of the Bankruptcy Code (“[t]he trustee, after notice and a hearing, may use, sell or lease, other than in the ordinary course of business, property of the estate”). See In re Montgomery Ward Holding Corp., 242 B.R. 147, 153 (D. Del. 1999) (affirming the

¹⁰ PG&E believes that the consultants described above should not be considered “professional persons” requiring approval under Bankruptcy Code Section 327(a). This is due both to the nature of the services to be provided and to the consultants’ limited role in connection with PG&E’s reorganization proceeding.

1 bankruptcy court's decision to approve expenditure for employee incentive programs, noting
2 that bankruptcy court has considerable discretion in approving a Section 363(b) motion).

3 In determining whether to authorize a transaction under Section 363(b)(1), courts
4 require a debtor to show that a sound business purpose justifies such actions, applying the
5 business judgment test. See, e.g., Stephens Indus., Inc. v. McClung, 789 F.2d 386, 389-90
6 (6th Cir. 1986); Committee of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.), 722
7 F.2d 1063, 1071 (2d Cir. 1983); see also 3 Lawrence P. King, Collier on Bankruptcy
8 ¶363.02[1][g] (15th ed. rev. 1998).

9 Once the debtor has articulated a rational business justification, a presumption
10 attaches that the decision was made "on an informed basis, in good faith and in the honest
11 belief that the action taken was in the best interest of the [debtor]." See, e.g., Official
12 Comm. of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.),
13 147 B.R. 650, 656 (S.D.N.Y. 1992) (citing Smith v. Van Gorkom, 488 A.2d 858 (Del.
14 1985)).

15 Sound business justifications exist for approval of the various implementation
16 costs described above. PG&E does not have sufficient capacity or skills in-house to perform
17 and complete the work without the assistance of the outside consultants. Also, PG&E is
18 solvent and has sufficient cash to pay the expenses described herein without causing any
19 detriment to its creditors.¹¹

20 Consistent with PG&E's previous implementation expense requests, PG&E
21 continues to enter into contracts with consulting firms that allow PG&E to terminate without
22 cause and without any penalty, so that in the event that the implementation work is no longer
23 necessary, PG&E can minimize its costs. Furthermore, PG&E has included only those
24 projects that have been identified as critical for completion by or in advance of the Plan
25 Effective Date, and which require long lead time or must be completed before subsequent,
26

27 ¹¹ As reflected in PG&E's August 2002 Monthly Operating Report, PG&E held more
28 than \$4.1 billion in cash reserves as of August 31, 2002.

1 related implementation work can be performed. On that basis, PG&E believes that the
2 implementation projects described herein are necessary and should be approved so that work
3 can commence promptly.

4
5 **CONCLUSION:**

6 For all of the foregoing reasons, PG&E respectfully requests that the Court
7 approve the costs described above and grant such other and further relief as may be just and
8 appropriate.

9
10 DATED: October 18, 2002

Respectfully,

11 HOWARD, RICE, NEMEROVSKI, CANADY,
12 FALK & RABKIN
A Professional Corporation.

13
14 By: 

JULIE B. LANDAU

15 Attorneys for Debtor and Debtor in Possession
16 PACIFIC GAS AND ELECTRIC COMPANY

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